

***United States Court of Appeals
for the Second Circuit***



APPENDIX

15-7367

United States Court of Appeals
FOR THE SECOND CIRCUIT

Docket No. T 4876

ROBERT P. KOCH, KEVIN P. RYAN,
JOHN J. WILSON, Captains of Police,
PHILIP BOHRER, JAMES L. JUDGE,
WILLIAM WIESE, Lieutenants of Police.
RICHARD BECK, JOSEPH BIRBIGLIA,
CHARLES CASEY, JAMES CLARK, EDWARD
EASTWOOD, JOHN GALANTINI,
RONALD GOULDNER, REGINALD GREEN-
IDGE, RUSSLAN HOFFMAN, JAMES KEFLS,
JOHN MURRAY, LAWRENCE PALLADINO,
Sergeants of Police, New York City
Transit Authority, Plaintiffs-Appellants,
- against -

DAVID L. YUNICH, Chairman and Chief
Executive Officer, New York City Transit
Authority, and ALPHONSE E. D'AMBROSE,
Personnel Director and Chairman of the
Civil Service Commission, City of New
York,

Defendants-Appellees.

JOINT APPENDIX ON APPEAL



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INDEX

PAGE

Docket Entries	1
Verified Complaint	2
Order to Show Cause [Judd, D.J.].....	21
Affidavit of Service	23
Order Dismissing Complaint [Bruchhausen, D.J.]	24
Notice of Appeal	25

75C 942

KOCH, et al vs. YUNICH, et ano

DATE	NR.	PROCEEDINGS
6-13-75		Complaint filed. Summons issued. (1)
06-19-75		By JUDD, J.--Order to show cause ret. 6-20-75 for an order to enjoin certain administrative action re: rights, without proof of service filed (order dtd 6-13-75) Hearing to be held before ERUCHHAUSEN, J. in chambers at 10 am. Attys notified At (2)
6/20/75		Affidavit of Service filed (for Order to Show Cause & Complaint). (3)
6/20/75		Before BRUCHHAUSEN, J. - C. called- Order to Show Cause directing the relief requested by the plttff against the deft, etc.- Motion denied.
6-20-75		By BURCHHAUSEN, J.--Order dtd 6-20-75 dismissing complaint filed. (4)
6=20-75		Notice of appeal filed. Copy mailed to C of A & parties. Jn (5)
6-20-75		Above record on appeal certified & handed to Mr. Ludwig for delivery to C of A.
6-23-75		Acknowledgment received from C of A for receipt of record on appeal filed. -- (6)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

75 Civ. 942

ROBERT P. KOCH, KEVIN P. RYAN,
JOHN J. WILSON, Captains of Police,
PHILIP BOHRER, JAMES L. JUDGE,
WILLIAM WIESE, Lieutenants of Police.
RICHARD BECK, JOSEPH BIRBIGLIA,
CHARLES CASEY, JAMES CLARK, EDWARD EASTWOOD,
JOHN GALANTINI,
RONALD GOULDNER, REGINALD GREENIDGE,
RUSSLAN HOFFMAN, JAMES KEELS,
JOHN MURRAY, LAWRENCE PALLADINO,
Sergeants of Police, New York City
Transit Authority, Plaintiffs,
- against -

VERIFIED COMPLAINT

DAVID L. YUNICH, Chairman and Chief
Executive Officer, New York City Transit
Authority, and ALPHONSE E. D'AMBROSE,
Personnel Director and Chairman of the
Civil Service Commission, City of New
York,

Defendants.

Plaintiffs, above-named, by their attorney, Frederick J.
Ludwig, for their complaint, allege as follows:

FIRST. Plaintiffs, above-named, hold the several and different positions on a permanent basis in the competitive service under the government of the State of New York and certain of its civil and political subdivisions of Captain of Police, Lieutenant of Police, and Sergeant of Police, New York City Transit Authority. All are residents of the State of New York, twelve within the counties of Kings, Nassau, Queens and Suffolk, and the remaining six in other counties of the State.

SECOND. Defendant David L. Yunich is the Chairman and Chief Executive Officer of the New York City Transit Authority, a board created by State statute that vests in its Chief Executive Officer

responsibility for the discharge of the functions and powers of the Authority, with offices located in the County of Kings, State of New York.

THIRD. Defendant Alphonse E. D'Ambrose is Person Director and Chairman of the Civil Service Commission of the City of New York, authorized by State to promulgate rules in certain instances in connection with the suspension or demotion of employees of the New York Transit Authority upon abolition or reduction of positions, with offices located in the County of New York, State of New York.

FOURTH. This action is brought under the provisions of "An Act to enforce the Provisions of the Fourteenth Amendment, and for other Purposes", 17 Stat. 13 [April 20, 1871], R.S. § 1979, 42 U.S.C. §§ 1983, 1985(3) and Amendment XIV, Sections 1 and 5, Constitution of the United States, to enjoin certain administrative action threatened to be taken under color of State law depriving plaintiffs of their rights, privileges, and immunities secured by the Constitution of the United States; under the provisions of 28 U.S.C. §§ 1343(3), 2201 and 2202, for declaratory judgment that a certain provision of the State Civil Service Law is null and void in its threatened application to plaintiffs; and under the provisions of 28 U.S.C. §§ 2281 and 2284, for the convening of a three-judge court to hear and determine this proceeding.

FIFTH. For more than four score years, the Constitution of the State of New York has provided that "Appointments and promotions in the civil service of the state and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive;". By statute of the State, separate and different positions in the competitive civil service under the New York City Transit Authority have been established for Captain of Police, Lieutenant of Police, and Sergeant of Police. Pursuant to this provision of the State Constitution, statutes of the State implementing the provision, and rules of the Civil Service Commission of the City of New York made under authority of these statutes, appointment to these positions have been made on the basis of written competitive examination open to those holding positions in the next lower grade, weighted fifty percent, and the record of the competitor consisting of his seniority and certain performance in the same next lower grade, weighted the remaining fifty percent. In addition, additional credit is provided by provision of the State Constitution in the case of war veterans: five points for those discharged under honorable circumstances, or ten points for those disabled, in a competitive examination for original appointment; or two and one-half points, and five points respectively, in the case of competitive examination for promotion. This additional credit for veterans is explicitly limited to a single occasion by that provision of the Constitution: "No such member shall receive the additional credit granted

by this section after he has received one appointment, either original entrance or promotion, from an eligible list on which he was allowed the additional credit granted by this section."

SIXTH, Pursuant to the provisions of State law set forth and referred to in paragraph "FIFTH", each of the plaintiffs received appointment on a permanent basis to the following positions under the New York City Transit Authority on the dates indicated:

<u>Plaintiff</u>	<u>Captain of Police</u>	<u>Date Appointed</u>
Robert P. Koch		January 24, 1972
Kevin P. Ryan		January 24, 1972
John J. Wilson		January 24, 1972
	<u>Lieutenant of Police</u>	
Philip Bohrer		March 16, 1974
James L. Judge		June 23, 1970
William Wiese		July 7, 1973
	<u>Sergeant of Police</u>	
Richard Beck		October 26, 1974
Joseph Birbiglia		October 26, 1974
Charles Casey		October 26, 1974
James Clark		October 26, 1974
Edward Eastwood		August 31, 1974
John Galantini		October 26, 1974
Ronald Gouldner		March 16, 1974
Reginald Greenidge		August 31, 1974
Russlan Hoffman		December 22, 1973
James Keels		October 26, 1974
John Murray		October 26, 1974
Lawrence Palladino		October 26, 1974

SEVENTH. By statute in 1958, the State of New York made provision for suspension or demotion upon the abolition of positions in the civil service. The formula adopted for that "suspension or demotion, as the case may be, among incumbents holding the same or similar positions shall be [made] in the inverse order of original appointment on a permanent basis in the competitive service". "Units for suspension or demotion in civil divisions" were defined as "the same or similar positions in the entire department or agency within which such abolition or reduction of positions occurs." By amendment to this statute, enacted in 1972 to take effect October 1, 1973, the formula for suspension or demotion was modified from appointment on a permanent basis in the "competitive" service to the "classified" service. In addition, by statute covering suspension or demotion, non-disabled veterans have their date of original appointment deemed thirty months earlier than the actual date; and disabled ones, sixty months earlier.

EIGHTH. During 1974, the defendant Director of Personnel demanded submission by the New York City Transit Authority of "lay-off lists" "no later than December 9, 1974". On November 12, 1974, in accordance with the historic merit provision in the State Constitution and the State statutory definition of a unit for suspension or demotion as "the same or similar positions in the entire department or agency", a list in order of seniority was prepared for the position of Captain of Police, consisting of forty such persons. Of the thirty-nine Captains of Police currently in service, one was appointed on a permanent basis on September 23, 1967, twenty-seven - including the three Captains of Police who are plaintiffs in this action - on January 24,

1972, and the remaining Captains subsequent to January 24, 1972. Notwithstanding appointment on a permanent basis to the position of Captain on that date, one plaintiff - Koch - has been notified of his demotion to Lieutenant of Police, scheduled on June 30, 1975, and the remaining two plaintiff Captains are threatened with such demotion. This is the case even though each of the three Captains hold their positions longer than thirteen other Captains, neither notified of nor threatened with demotion, and in five instances the plaintiff Captains have held their positions almost three years longer than Captains not so notified or threatened.

NINTH. As in the case of the plaintiff Captains, all three plaintiff Lieutenants of Police have been appointed to the position on a permanent basis, and, in addition, have held their positions for periods of time substantially longer than the tenure of a multitude of the one hundred fifteen Lieutenants currently in service. Two such plaintiffs - Bohrer and Wiese - have been notified of their demotion to Sergeant of Police, scheduled on June 30, 1975, and the remaining plaintiff Lieutenant is threatened with such demotion. This is the case even though each of the three Lieutenants hold their positions longer than a multitude of other Lieutenants, neither notified of nor threatened with demotion.

TENTH. As in the ~~cases~~ of both the plaintiff Captains and Lieutenants, all twelve plaintiff Sergeants of Police have been appointed to the position on a permanent basis, and also have held their positions for periods of time longer than the tenure of a considerable number of the two hundred forty-eight Sergeants currently in service. Seven such plaintiffs have been notified of

their demotion to Patrolman, scheduled on June 30, 1975, and the remaining plaintiff Sergeants are threatened with such demotion. This is the case even though each of the twelve Sergeants hold their positions longer than a multitude of other Sergeants, neither notified of nor threatened with demotion.

ELEVENTH. As set forth in paragraph FIFTH, the Constitution of the State of New York, Art. 5, § 6, by provision twice approved by the Legislature at successive sessions in 1892 and 1893 and adopted by the voters of the State in 1893, established the historic policy of the State for holding public employment as "merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive." By amendment twice approved by the Legislature in 1948 and 1949 and adopted by the voters of the State in 1949, additional credit was granted war veterans on competitive examinations for original appointment or promotion subject to the explicit limitation, "No such member shall receive the additional credit granted by this section after he has received one appointment, either original entrance or promotion, from an eligible list on which he was allowed the additional credit granted by this section." In June, 1975, the defendant New York City Personnel Director caused to be issued a pamphlet summarizing previous directives of his agency, including "TERMINATION PROCEDURES", and a copy of these procedures is contained in the APPENDIX which is annexed to and made part of this complaint. These procedures make no reference whatsoever to the Constitution of the State or its policy of "merit and fitness" for holding public employment and its prohibition against more than single

3

use of veterans' preference in obtaining that employment. Purporting to rely upon statutes enacted subsequent to adoption of this section of the State Constitution, these procedures governing "termination" depart from the fundamental law and policy of the State on public employment in two - among many other - significant respects:

A. The fundamental policy of "merit and fitness" on the basis of competitive examination for holding public employment in the State is ignored. In its place, the principle of longevity on the public payroll under the formula, "original permanent appointment in the classified service" - a category in public employment that embraces laborers and others for whom appointment on the basis of competitive examination is presumably not "practicable", and so-called "exempt" employees whose appointments are made, without regard to the practicability of selection on a competitive basis involving "merit and fitness", far more frequently than not, on the basis of political preferment. Under the fundamental policy of "merit and fitness" involving their appointment on a permanent basis to their respective positions of Captain, Lieutenant and Sergeant, each of the plaintiffs would neither be notified of nor threatened with demotion, because each of them has greater seniority in his position than others in similar positions who enjoy greater longevity on the public payroll in other categories of employment.

B. The fundamental policy against use on more than a single occasion of veterans' preference of the State Constitution is ignored. The termination procedures create "additional credit" by providing that "Veterans' original appointment date is set thirty (30) months earlier than the actual date", and that "Disabled veterans' original appointment date is set sixty (60) months earlier than the actual date." Under the fundamental policy against multiple use of veterans' preference, many of the plaintiffs would neither be notified nor threatened with demotion.

TWELFTH. The "bumping" of employees with less longevity on the public payroll deprives the plaintiffs of their public employment by subjecting them to a cascading avalanche of demotions, and ultimately to suspension and termination of that employment, notwithstanding their appointment on a permanent basis to their positions pursuant to the "merit and fitness" standards of the fundamental law of the State. "Bumping", as explained in the termination procedures contained in the APPENDIX, affects the plaintiff Captains as follows: all were appointed to their present position of Captain on January 24, 1972, based upon both a competitive examination - weighted fifty percent, and their record in the position of Lieutenant, similarly weighted, based almost entirely upon seniority in that position. All of these plaintiffs were appointed to the prior position of Lieutenant on November 16, 1968, again based both on competitive examination so weighted and seniority in the prior position of Sergeant, similarly weighted. All of these plaintiff Captains were appointed to the still prior position of Sergeant on July 8, 1967, once again based both on competitive examination so weighted and seniority in the prior position of Patrolman, similarly weighted. Upon execution of their demotion to Lieutenant, scheduled and threatened on June 30, 1975, these plaintiffs are subject to an instant second demotion, from their momentarily held position of Lieutenant to that of Sergeant. This is the case even though their seniority in the position of Lieutenant, dating from November 16, 1968, exceeds that of other incumbent Lieutenants - many of whom only took the examination for promotion to Lieutenant on June 17, 1972, almost

four years later. Upon information and belief, a third demotion from Sergeant to Patrolman of these plaintiffs may also occur on June 30, 1975, followed by their separation from service by suspension, in accordance with the termination procedures laid down by defendant Personnel Director of the City of New York. Upon information and belief, so far as "bumping" is provided for in these termination procedures, the remaining plaintiff Lieutenants and Sergeants in this action are similarly circumstanced to the plaintiff Captains and subject to similar cascading avalanche in successive demotion.

THIRTEENTH. The State statute creating the New York City Transit Authority provides in part [N.Y. Public Authorities Law § 1210(2)]: "The appointment, promotion and continuance of employment of all employees of the authority shall be governed by the provisions of the civil service law and the rules of the municipal civil service commission of the city." Since 1961, provision has been made in the same statute that the Authority in its discretion "may maintain a division for detective purposes to be known as the detective division" [id., § 1204(16)]. The defendant Chairman and Chief Executive Officer of the Authority maintains such division and in it a total of 209 police officers, each of whom is awarded annually compensation in addition to that provided for the position in the competitive service that he holds on a permanent basis, and this additional compensation amounts annually to the aggregate sum of \$679,672, as herein set forth:

<u>"Designated" detectives</u>				Individual additional	<u>Total</u>
<u>Grade</u>	<u>Patrolmen</u>	<u>Policewomen</u>	<u>Total</u>	<u>annual compensation</u>	
1st	16	0	16	\$7,625	\$122,000
2d	43	1	44	4,575	201,300
3d	117	10	127	2,288	290,576
<u>"Designated" supervisors</u>					
Lieut.	4		4	2,724	10,896
Sgt.	18		18	3,050	54,900
GRAND TOTAL			209		679,672

FOURTEENTH. As set forth in paragraphs FIFTH and ELEVENTH, the Constitution of the State of New York [Art. 5, § 6] since 1894 has mandated that both "Appointments and promotions in the civil service of the state and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive." As set forth in paragraph THIRTEENTH, the statute creating the New York City Transit Authority mandates that "appointment, promotion and continuance of employment of all employees of the authority shall be governed by the provisions of the civil service law" [N.Y. Public Authorities Law § 1210(2)]. Flatly contrary to the fundamental law of the State is the award of compensation additional to that provided by law for positions held by them on a permanent basis in the competitive service in the case of the 209 police officers set forth in paragraph THIRTEENTH. Not a single such police officer has at any time demonstrated his "merit and fitness" for the additional compensation "by examination which * * * shall be competitive." On the contrary, most of the 187 Patrolmen and Policewomen receiving the additional compensation

described in paragraph THIRTEENTH have demonstrated absence of "merit and fitness" for increased emolument: having taken the examination for promotion to Sergeant in competition with other Patrolmen and Policewomen lacking their preferment, they have failed to achieve that promotion. Each of the 16 Patrolman, set forth in paragraph THIRTEENTH as receiving the greatest preferment in additional compensation - \$7,625 a year per man, have taken on one or more occasions the competitive examination for promotion to Sergeant. Their failure to achieve promotion has actually been lavishly rewarded. Had any one of them achieved that promotion, he would be entitled to additional compensation above that of Patrolmen, \$4,575. By failing, each has attained an annual stipend of \$3,050 more than if he had succeeded. In terms of additional annual compensation, by failing to meet the test of "merit and fitness" prescribed by the fundamental law of the State for promotion and additional compensation that promotion entails, each of the favored 16 has achieved, by one act of failure, the precise equivalent in those terms of two acts of achievement under procedures mandated by fundamental law: each has achieved the position of Lieutenant by failure to achieve the position of Sergeant. In those terms of additional compensation, serious consequences attend any success attained according to procedures mandated by fundamental law: each would sustain an annual loss of \$3,050.

FIFTEENTH. As alleged in paragraphs EIGHTH, NINTH and TENTH, each of the plaintiffs either has been notified of or threatened with demotion to the next lower position. The loss in annual compensation in each case in event of a single demotion is as follows:

<u>Plaintiffs</u>		Individual difference	
<u>Demotion</u>	<u>Number</u>	<u>annual compensation</u>	<u>Total</u>
Captain to Lieutenant	3	-\$8,362	-\$25,086
Lieutenant to Sergeant	3	- 3,050	- 9,150
Sergeant to Patrolman	<u>12</u>	- 4,325	<u>- 51,900</u>
GRAND TOTAL	18		- 86,136

SIXTEENTH. As set forth in paragraph FIFTEENTH, the net amount realized by the scheduled and threatened demotion of the plaintiffs, contrary to the historic policy of "merit and fitness" contained in the fundamental law of the State and explicitly adopted by the State statute creating the New York City Transit Authority that requires that "continuance of employment of all employees of the authority shall be governed by provisions of the civil service law" of the State, is \$86,136. As set forth in paragraph THIRTEENTH, the net amount that has not been realized by the act of retaining officers at additional annual compensation, in flat contradiction of the provisions of the State Constitution and the State statute adopting those provisions, is \$679,672. The difference in the continuance of employment is \$593,536, or almost 800 percent of the amount to be saved by the obedience of defendants to the fundamental law of the State more than the amount to be incurred by their disobedience.

SEVENTEENTH. Set forth in paragraph FIFTEENTH are the amounts in annual compensation scheduled or threatened to be lost by the plaintiffs. Approximately one-half of these amounts will be lost upon the retirement of plaintiffs under their contributory retirement pension plan. Article 5, § 7 of the Constitution of the State

of New York, was twice approved by the Legislature in 1937 and 1938, and adopted by the voters of the State in 1939. It provides, "After July first, nineteen hundred forty, membership in any pension or retirement system of the state or of a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired." Upon information and belief, prior to adoption of the amendment, the time of retirement fixed the rights of the employee; the purpose of the amendment was to fix the rights of the employee at the time he became a member of the system. Each of the plaintiffs, pursuant to State statute [N.Y. Public Authorities Law § 1210(3)] became members of a pension and retirement system of a civil division of the State, and did so subsequent to July 1, 1940.

EIGHTEENTH. One-third of the plaintiff Sergeants are black and members of a minority group. Upon information and belief, blacks and other minority groups constitute approximately 31 percent of the employees under the authority of the defendant New York City Personnel Director. Upon information and belief, these employees have entered civil service in numbers disproportionately greater and at dates more recent than other employees. The termination procedures of defendant New York City Personnel Director, set forth in the APPENDIX, by making the criterion for demotion and separation from service longevity on the public payroll rather than seniority in position held on a permanent basis pursuant to competitive examination to determine merit and fitness, has produced an adverse impact upon employees of black and minority groups greater than upon other employees.

NINETEENTH. The criterion of longevity rather than seniority in position for demotion and separation on its face operates with greater adverse impact upon a class of employees who lack the alternative of retirement for service rather than accept demotion or layoff, and does so unreasonably. In terms of impact on the employee, termination procedures that applied to employees who had the alternative of retirement would self-evidently have less adverse economic effect.

TWENTIETH. The termination procedures set forth in the APPENDIX as applied to the police force of the New York City Transit Authority creates two separate and distinct classes without basis in reason with respect to the effect of "merit and fitness" upon determination of demotion or separation: [i] Patrolmen, for whom the principle of "merit and fitness" operates with virtually total effect in almost every case together with seniority in the position held on a permanent basis. Separation of a Patrolman primarily depends upon his position on the eligible list for Patrolmen -something that has been determined 100 percent by "merit and fitness" ascertained by competitive examination. [ii] Sergeants, Lieutenants and Captains, for whom the principle of "merit and fitness" has operated only to the extent of 50 percent in their appointment, the remaining 50 percent having been determined almost entirely by length of service in a prior position.

TWENTY-FIRST. With respect to its adverse effect upon the police service, the termination procedures work to the ultimate detriment of the City of New York. The head of the largest police organization in the United States, Michael J. Codd, Police Commissioner of the City of New York observed: "A quick look of the ranks involved indicated that the people that would fall, actually represent some of the outstanding leaders - people who have achieved supervisory rank in a relatively short period of time. * * * To stymie the careers of officers who will logically be running the force in future years could logically work to the detriment of the city."

TWENTY-SECOND. Whether or not there is an abstract right to public employment, the Constitution of the United States protects against separation and loss under a State or its political subdivision in a patently arbitrary and discriminatory manner. The scheduled and threatened demotion of the plaintiffs deprives each of them of property without due process of law, considered in a substantive sense, because such State action is arbitrary, capricious, unreasonable and contrary to law, all contrary to Amendment XIV, Section 1, Constitution of the United States.

TWENTY-THIRD. The scheduled and threatened demotion of plaintiffs is discriminatory and deprives each of them of the equal protection of the laws, contrary to Amendment XIV, Section 1, Constitution of the United States.

TWENTY-FOURTH. The scheduled and threatened demotion of plaintiffs, involving as it does loss, diminution and impair-

ment of pension rights, a contractual obligation under the fundamental law of the State, constitutes State action impairing the Obligation of Contracts, contrary to the Constitution of the United States, Article I., Section 10, and deprivation of property without due process of law, considered in a substantive sense, contrary to the Constitution, Amendment XIV, Section 1.

TWENTY-FIFTH. The scheduled and threatened demotion of plaintiffs without any hearing whatsoever, deprives each of them of property without due process of law, considered in a procedural sense, contrary to the Constitution of the United States, Amendment XIV, Section 1.

TWENTY-SIXTH. Plaintiffs have no adequate remedy at law.

TWENTY-SEVENTH. Plaintiffs are making application for an order to show cause in this action because the action of defendants is scheduled to take place on June 30, 1975, and plaintiffs desire a stay thereof pending determination of this application and action.

WHEREFORE, plaintiffs pray for the following relief:

[i] Pursuant to 28 U.S.C. §§ 2281 and 2284, a three-judge court be convened to hear and determine this action.

[ii] A permanent injunction be issued on behalf of the plaintiffs herein, restraining the defendants, their agents, employees and all others acting in concert therewith, from proceeding with the proposed demotion and separation from employment of the plaintiffs herein.

[iii] A declaratory judgment be issued on behalf of plaintiffs that the provisions of Sections 80 and 85 of the Civil Service Law of the State of New York be declared null and void in so far as any provisions contained in those statutes mandate demotion or separation from service of the plaintiffs on any basis other than merit and fitness and seniority in a position held on a permanent basis.

[iv] Pending the hearing and determination of the requests for permanent relief, an interlocutory injunction be issued restraining the defendants, their agents, employees and all others acting in concert therewith, from proceeding with the proposed demotion and separation from employment of the plaintiffs herein.

[v] For such other and further relief which to this court may seem just and proper in the premises.

FREDERICK J. LUDWIG

FREDERICK J. LUDWIG
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212 MU 7-4990

[Verification by Individual Plaintiffs]

A P P E N D I X

INFORMATION FOR EMPLOYEES BEING SEPARATED FROM CITY SERVICE

[Issued in June, 1975 by Alphonse E. D'Ambrose, New York City Personnel Director]

This pamphlet is designed to assist City employees who are being laid off from their jobs by providing answers to common questions dealing with their status and fringe benefits. This pamphlet is not intended to be a complete or definitive statement of the legal rights of City employees or legal obligations of the City.

I. TERMINATION PROCEDURES

Sections 80 and 85 of the Civil Service Law outline the terms and conditions pertaining to the suspension or demotion of employees upon the abolition or reduction of positions.

A. LAY-OFFS

Lay-offs are determined by class of position within each affected agency as follows:

1. Since provisional employees have no civil service tenure, they must be terminated before permanent employees in the same title are terminated.
2. Employees who have not completed their probationary service shall be laid off before any permanent employees in the same title. Among such probationary employees such lay-offs shall be made in the inverse order of date of probationary appointment, including consideration of veterans and disabled veterans preference, and prior permanent service in the classified service.
3. Lay-off of permanent employees is in inverse order from date of original permanent appointment in the classified service; however:
 - a. Veterans' original appointment date is set thirty (30) months earlier than the actual date, provided they meet all of the following requirements:
 - (1) Were on active duty during any of the following periods:

April 6, 1917 - November 11, 1918;
December 7, 1941 - September 2, 1945;
June 26, 1950 - July 27, 1953;
January 1, 1963 - March 29, 1973.
 - (2) Received discharges under honorable conditions.
 - (3) Are citizens of the United States.
 - (4) Were residents of New York State at the time of entry into military service.
 - (5) Are residents of New York State at the time of lay-off.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROBERT P. KOCH, KEVIN P. RYAN,
JOHN J. WILSON, Captains of Police,
PHILIP BOHRER, JAMES L. JUDGE,
WILLIAM WIESE, Lieutenants of Police.
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RUSSLAN HOFFMAN, JAMES KEELS,
JOHN MURRAY, LAWRENCE PALLADINO,
Sergeants of Police, New York City Transit Authority,
Plaintiffs,
- against -

75 Civ. 942

ORDER TO SHOW CAUSE

DAVID L. YUNICH, Chairman and Chief Executive Officer, New York City Transit Authority, and ALPHONSE E. D'AMBROSE, Personnel Director and Chairman of the Civil Service Commission, City of New York,
Defendants.

Upon the annexed copy of a verified complaint seeking relief under the Civil Rights Act, 42 U.S.C. §§ 1983 to enjoin certain administrative action threatened to be taken under color of State law depriving plaintiffs of their rights, privileges and immunities secured by the Constitution of the United States for declaratory judgment that certain provisions of the State Civil Service Law are null and void in their threatened application to plaintiffs, for a three-judge court to be convened to hear and determine this proceeding, and for an interlocutory injunction pending the hearing and determination of this proceeding

It is hereby ORDERED that the defendants or their attorneys show cause before a Judge of this Court at the United States

Courthouse, No. 225 Cadman Plaza East, Brooklyn, New York, in Court Room 11, at 11 A.M. on June 20, 1975, or as soon thereafter as counsel may be heard, why an order should not be entered directing the relief requested by plaintiffs against defendants, and for such further relief as the Court may deem proper; and

It is further ORDERED that a copy of this order together with the papers upon which it is granted be personally served upon the defendants on or before June 16, 1975, and that such service shall be deemed good and sufficient service.

/s/ ORRIN G. JUDD

U.S.D.J.

Dated, Brooklyn, N.Y.
June 13, 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROBERT P. KOCH, KEVIN P. RYAN,
JOHN J. WILSON, Captains of Police,
PHILIP BOHRER, JAMES L. JUDGE,
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CHARLES CASEY, JAMES CLARK, ED-
WARD EASTWOOD, JOHN GALANTINI,
RONALD GOULDNER, REGINALD GREEN-
IDGE, RUSSIAN HOFFMAN, JAMES KEELS,
JOHN MURRAY, LAWRENCE PALLADINO,
Sergeants of Police, New York City
Transit Authority,
- against - Plaintiffs,

DAVID L. YUNICH, Chairman and Chief
Executive Officer, New York City Transit
Authority, and ALPHONSE E. D'AMBROSE,
Personnel Director and Chairman of the
Civil Service Commission, City of New
York,

Defendants.

75 Civ. 942

AFFIDAVIT OF SERVICE

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT, E.D.N.Y.
JUN 20 1975

STATE OF NEW YORK)
 : Ss.:
COUNTY OF THE BRONX)

DAVID WEISSMAN, being duly sworn, deposes and says that:
Deponent is not a party to this action, is over eighteen
years of age, and resides at 81-11 261 Street, Floral Park, New
York;

On the 13th day of June, 1975, deponent served the within
Order to Show Cause and Verified Complaint upon the Defendants
therein as follows:

Upon the within named defendant, ALPHONSE E. D'AMBROSE, by
delivering a true copy thereof personally to him at No. 220 Church
Street, New York, New York;

Upon the within named defendant DAVID L. YUNICH, by deliver-
ing a true copy thereof to his office at No. 1700 Broadway,
New York, New York.

Sworn to before me

/s/ DAVID E. WEISSMAN

this 19 day of June, 1975.
/s/ PAUL C. BURKE, Notary Public

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

F I L E D

CLERK'S OFFICE

U.S.D.C., E.D.N.Y.

JUN 20 1975

ROBERT P. KOCH, KEVIN P. RYAN,
JOHN J. WILSON, Captains of Police,
PHILIP BOHRER, JAMES L. JUDGE,
WILLIAM WIESE, Lieutenants of Police.
RICHARD BECK, JOSEPH BIRBIGLIA,
CHARLES CASEY, JAMES CLARK, EDWARD
EASTWOOD, JOHN GALANTINI,
RONALD GOULDNER, REGINALD GREEN-
IDGE, RUSSIAN HOFFMAN, JAMES KEELS,
JOHN MURRAY, LAWRENCE PALLADINO,
Sergeants of Police, New York City
Transit Authority,

75 Civ. 42

O R D E R

Plaintiffs,

-against-

DAVID L. YUNICH, Chairman and Chief
Executive Officer, New York City Transit
Authority, and ALPHONSE E. D'AMBROSE,
Personnel Director and Chairman of the
Civil Service Commission, City of New
York,

Defendants.

Upon reading the complaint in the within action, and upon
hearing counsel for the plaintiffs and defendants on this date,
it is hereby

ORDERED, that the complaint herein be and the same is
dismissed.

E N T E R,

/s/ WALTER BRUCHHAUSEN

U.S.D.J.

Dated, Brooklyn, N.Y.
June 20, 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROBERT P. KOCH, KEVIN P. RYAN,
JOHN J. WILSON, Captains of Police,
PHILIP BOHRER, et al.,

Plaintiffs,

-against-

DAVID L. YUDICH, Chairman and
Chief Executive Officer, N.Y.C.
Transit Authority, et al.,

Defendants.

75 Civ. 942

NOTICE OF APPEAL

PLEASE TAKE NOTICE that plaintiffs appeal to the Court of Appeals for the Second Circuit from an order made on the 20th day of June, 1975 by District Judge Bruchhausen dismissing the complaint in the above entitled action.

Yours, etc.

FREDERICK J. LUDWIG

Dated, Brooklyn, N.Y.
June 20, 1975

FREDERICK J. LUDWIG
Attorney for the Plaintiffs
Office & Post Office Address
60 East 42nd Street - Suite 2206
New York, N.Y. 10017



